REMARKS

Claims 158-167, 175 and 176 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Claims 134, 137-139, 141, 145-147, 149-151, 153, 157-158, 160, 164-169, 171-173, and 175-176 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Pat. No. 5,440,334 ("Walters") in view of U.S. Pat. No. 6,728,713 ("Beach"). Claims 140, 152, 159 and 174 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walters in view of Beach and further in view of U.S. Pat. No. 6,025,868 ("Russo"). Claims 142-144, 154-156, and 161-163 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walters in view of Beach and further in view of U.S. Pat. No. 6,005,938 ("Banker") and U.S. Pat. No. 4,613,901 ("Gilhousen").

Claims 134, 135, 137-141, 143-145, 147, 149-153, 155-169, and 171-176 are amended herein. No new matter is added with these amendments.

Telephonic Interview

Applicants' undersigned attorney wishes to thank Examiner Strange for the opportunity, on March 5, 2008, to conduct a telephonic interview on the pending Application and for the Examiner's careful attention to the matter. During the interview, the rejections under 35 U.S.C. § 101 and the claim recitation of "classification information" were discussed. Tentative agreement was reached that the independent claims would be amended.

Claim Rejections – 35 U.S.C. § 101

Claims 158-167, 175 and 176 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Without conceding the propriety of the rejections and arguments supporting the rejections of these claims in the Office Action prior to the amendments herein, Applicants believe that these claims as amended recite patentable subject matter. In particular, a recording apparatus is not software *per se*. Accordingly, Applicants respectfully request that the rejection of claims 158-167, 175 and 176 under 35 U.S.C. § 101 be withdrawn.

Claim Rejections – 35 U.S.C. § 103(a))

Claims 134, 137-139, 141, 145-147, 149-151, 153, 157-158, 160, 164-169, 171-173, and 175-176 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walters in view of Beach. Claims 140, 152, 159 and 174 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walters in view of Beach and further in view of Russo. Claims 142-144, 154-156, and 161-163 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walters in view of Beach and further in view of Banker and Gilhousen.

Without conceding the propriety of the rejections and arguments supporting the rejection of these claims in the Office Action prior to the amendments herein, Applicants submit that the individual references cited in the rejection, or any combination thereof, do not disclose the subject matter of these claims as amended.

Claim 134 as amended recites:

> 134. A method comprising:
>
> transmitting a plurality of video programs to a plurality of consumer devices at respective consumer locations, wherein each said consumer device comprises a mechanism configured to recognize classification information contained in received headers, a mechanism configured to automatically select for storage video programs from the plurality of video programs having a defined level of match between classification information associated with the video programs and preference information associated with the consumer device, and an overwriting mechanism configured to automatically overwrite stored digital data content with automatically selected video programs according to one or more defined criteria; and
>
> transmitting classification information in a header associated with at least one of the plurality of video programs transmitted wherein said classification information comprises descriptive information other than specific identification of the at least one of the plurality of video programs.

Applicants contend that the cited references to not teach or suggest the claim recitations. Walters discloses transmitting video programs with a "VID." The VID is defined as "data that *uniquely identifies the program*" (Walters, column 4, lines 20-21, emphasis added) and "a system implementation dependent string of data that *identifies the program being transmitted*" (Walters, column 11, lines 27-29, emphasis added). Walters notes that

"[u]pon matching the VID, receiver 40 is then utilized for receiving and storing transmission segment 35." (Walters, column 4, lines 22-24.) The Examiner has not asserted that Beach teaches transmitting classification information. Applicants contend that transmitting classification information that "comprises descriptive information other than specific identification of the at least one of the plurality of video programs" as recited in claim 134 is patentably defined over the transmission of an identifier that uniquely identifies a video program such as is disclosed in Walters.

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 134 and, therefore, claim 134 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 134 be withdrawn.

Claim 146 recites:

> a computer readable medium having computer-executable instructions stored thereon for performing the method of claim 134.

Claim 158 recites, in part:

> a receiving mechanism configured to receive a plurality of transmitted video programs wherein there is classification information in a header associated with at least one of the plurality of video programs transmitted wherein said classification information comprises descriptive information other than specific identification of the at least one of the plurality of video programs;
>
> a comparing mechanism configured to compare the classification information to preference information associated with the device

Claim 168 recites, in part:

> receiving classification information in a header associated with at least one of the plurality of video programs received;
>
> comparing the classification information to preference information associated with the consumer device;
>
> automatically selecting for storage video programs from the plurality of video programs having a defined level of match between the classification information and the preference information

Claim 175 recites, in part:

> a mechanism configured to receive classification information transmitted in a header associated with at least one of the plurality of video programs transmitted wherein said classification information comprises descriptive information other than specific identification of the at least one of the plurality of video programs;
>
> a mechanism configured to compare the classification information to preference information associated with the consumer device;
>
> a mechanism configured to automatically select for storage video programs from the plurality of video programs having a defined level of match between classification information and preference information;

The reasons explained above with respect to the patentability of claim 134 apply as well to claims 146, 158, 168, and 175. Accordingly, Applicants respectfully submit that the cited references do not teach the recitations of claims 146, 158, 168, and 175and, therefore, these claims is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 146, 158, 168, and 175 be withdrawn.

Claims 137-145, 147, 149-15-157, 159-167, 169, 171-174, and 176 each depend directly or indirectly, from one of independent claims 134, 146, 158, 168, and 175. Applicants respectfully submit that for at least the reasons explained above with respect to independent claims 134, 146, 158, 168, and 175, these dependent claims are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

Conclusion

As explained above, Applicants submit that claims 134, 135, 137-147, 149-169, and 171-176, which currently stand rejected in the Application, are patentably defined over the cited art. The Examiner is respectfully urged to reconsider the Application. Favorable consideration and passage to issue of the application is earnestly solicited. If the Examiner should, however, find the claims as presented herein are not allowable for any reason or if the Examiner has any questions, comments, or suggestions that would expedite the prosecution of the present case, the Applicants undersigned representative would sincerely welcome a telephone conference at (206) 903-2475.

Date: May 21, 2008

/Kenneth E. Plochinski/
Kenneth E. Plochinski
Registration No. 59,166

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439